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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 WILLIAM TEASDALE and TIMOTHY  
10 MASSEY, M.D., Washington residents,

11 Plaintiffs,

12 v.

13 AIG DOMESTIC CLAIMS, INC.; LEXINGTON  
14 INSURANCE COMPANY; CHRIS NEAL, a  
Washington resident; and UNKNOWN JOHN  
DOES,

15 Defendants.  
16

CASE NO. C09-727RSM

ORDER GRANTING MOTION FOR  
REMAND

17 This matter is now before the Court for consideration of plaintiffs' motion for remand. Dkt. # 5.  
18 Although defendants have opposed the motion, the Court finds, for the reasons set forth below, that  
19 remand is appropriate, and grants plaintiffs' motion.  
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21 Plaintiffs filed this action in King County Superior Court, alleging causes of action for  
22 negligence, breach of contract, breach of the duty of good faith, breach of fiduciary duty, breach of  
23 Washington Insurance Fair Conduct Act, and breach of the Washington Consumer Protection Act, RCW  
24 19.86 *et seq.* Complaint, Dkt. # 1-2. This case arises, as will be explained more fully below, from a  
25 medical malpractice claim by plaintiff Teasdale against his surgeon plaintiff Massey, and the resulting  
26 state court lawsuit. The named defendants are plaintiff Massey's malpractice insurance carrier  
27 (Lexington Insurance Company, or "Lexington") and claims handler (AIG Domestic Claims, Inc., or

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1 “AIG”), together with the attorney who represented the insurance company in the underlying lawsuit,  
2 Mr. Neal.

3 The complaint alleges that Mr. Neal is a Washington resident, and defendants do not dispute that  
4 allegation. Nevertheless, they have removed the case to this Court pursuant to 28 U.S.C. §§ 1331, 1332,  
5 and 1441, asserting that “diversity jurisdiction exists because the citizenship of all properly joined  
6 defendants is diverse. . . .” Notice of Removal, Dkt. # 1, p. 3. Despite invoking § 1331 as a basis for  
7 jurisdiction, defendants have not pointed to any federal question in the complaint, nor can the Court  
8 ascertain any. The focus of defendants’ arguments in both the Notice of Removal and their opposition  
9 to plaintiffs’ motion for remand is diversity jurisdiction; defendants contend that Mr. Neal was  
10 fraudulently joined as a defendant in order to defeat federal jurisdiction. Plaintiffs have demonstrated  
11 otherwise.

12 Joinder of a resident defendant may be found to be fraudulent “[i]f the plaintiff fails to state a  
13 cause of action against a resident defendant, and the failure is obvious according to the settled rules of  
14 the state. . . .” *McCabe v. General Foods Corp.*, 811 F. 2d 1336, 1339 (9th Cir. 1987). Defendants  
15 contend that the claims asserted by plaintiffs against Mr. Neal are not legally viable because Mr. Neal  
16 was acting at all times as an agent for the defendant insurers, and that Dr. Massey, as a non-client of Mr.  
17 Neal, cannot state any claims against him for his acts taken in the course of his representation of the  
18 insurers.

19 The claims asserted against Mr. Neal are based on the following facts recited in the complaint.  
20 Plaintiff Teasdale sought treatment from Dr. Massey, an orthopedic surgeon, for a back injury.  
21 Following the surgery, Mr. Teasdale was left with permanent disability which prevented him from  
22 returning to his former occupation. Mr. Teasdale filed suit against Dr. Massey in September, 2005,  
23 alleging negligence under the Washington Health Care Act, RCW 7.70 *et seq*, and other causes of  
24 action. Dr. Massey turned the claim over to his insurer, Lexington and its claims handler, AIG. The  
25 insurers hired the law firm of Reed McClure to defend the lawsuit against Dr. Massey. Complaint, ¶¶  
26 4.1 - 4.3.

1 In April, 2007, Mr. Teasdale, through counsel, made demand for the policy limits of \$1 million.  
2 At that time, the defendant insurers had received several negative reviews from local expert witnesses  
3 indicating that Dr. Massey had violated the standard of care in treating Mr. Teasdale. Dr. Massey  
4 signed a consent to settle for the policy limits and sent it to defendants' counsel in May, 2007. Neither  
5 AIG nor Lexington responded to the settlement offer until June, 2007, when they rejected the offer  
6 stating they had "insufficient information to enable Lexington to fully evaluate Mr. Teasdale's claims."  
7 Complaint, ¶¶ 4.5 - 4.11.

8 By letter dated July 12, 2007, insurance defense counsel advised AIG, Lexington, and Dr.  
9 Massey of five negative reviews by orthopedic surgeons, all critical of Dr. Massey's medical care of Mr.  
10 Teasdale. The letter stated that the chance of a defense verdict was "nearly zero." In October, 2007, Dr.  
11 Massey hired private counsel Stephen Henley to push for settlement. On October 16, 2007, Mr. Henley  
12 wrote a private letter to AIG and Lexington detailing the adverse opinions of the orthopedic experts and  
13 Mr. Teasdale's other treating doctors, detailing the potential liability and damages exposure, and urging  
14 the insurer to "please settle this case immediately." Complaint, ¶¶ 4.15 - 4.16. The following day, AIG  
15 and Lexington offered to settle with Mr. Teasdale for the policy limits, with a confidentiality provision.  
16 Mr. Teasdale rejected the terms of the settlement offer. Thereafter, Mr. Teasdale and Dr. Massey went  
17 to court-ordered mediation and agreed to submit all remaining issues to private arbitration. Complaint,  
18 ¶¶ 4.16 - 4.18.

19 On April 24, 2008, having at some time prior to that date hired outside counsel Mr. Neal,  
20 Lexington moved to intervene in the civil suit to stay the arbitration proceedings. The motion filed in  
21 court by Mr. Neal disclosed, without authorization, the entire contents of Steven Henley's October 16,  
22 2007 letter, with its damaging opinions regarding Dr. Massey's liability exposure. As plaintiffs allege,  
23 "AIG, Lexington and Neal purposefully provided an unredacted copy of the private communication  
24 from its insured [to] the Court as a public document." Complaint, ¶ 4.21. Dr. Massey requested that  
25 they withdraw the document, but defendants refused to do so. *Id.* Dr. Massey objected to the use of the  
26 letter in the arbitration proceedings, but the arbitrator "ruled it was admissible and would be considered

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2 due to the defendants' deliberate conduct in publically disclosing the documents and contents, then  
3 refusing to take any steps to withdraw, protect or restrict its use." Complaint, ¶ 4.22. The arbitration  
4 resulted in an award of approximately \$8.6 million to Mr. Teasdale. Complaint, ¶ 4.24.

5 Plaintiffs further allege that defendants then refused to negotiate or discuss any offers of  
6 compromise to reduce the award. Instead, they sought again to intervene in the civil proceedings.  
7 During this time, Mr. Neal filed a declaration disclosing another highly prejudicial document, a letter  
8 written by Mr. Henley in confidence to Lexington and AIG. In this letter, wherein Mr. Henley again  
9 urged defendants to do all they reasonably could to settle the case for the policy limits, he stated his  
10 private opinion that the jury value of the case could "ultimately range up to \$10 million." Complaint, ¶  
11 4.29. The arbitration award was subsequently confirmed by the court. Complaint, ¶ 4.32.

12 The allegations directed specifically against Mr. Neal in the complaint are negligence, breach of  
13 good faith, breach of fiduciary or quasi-fiduciary duty, and breach of the Consumer Protection Act.  
14 Defendants' fraudulent joinder argument is based on the assertion that the complaint describes Mr. Neal  
15 as acting as an agent of AIG and Lexington. Complaint. ¶ 1.5. However, nowhere have defendants  
16 demonstrated that under settled Washington law, there is no possibility that Mr. Neal can be held  
17 personally liable, under one or more of the theories alleged by plaintiffs, for his conduct in filing the  
18 confidential letters as a public document in a court case. *McCabe v. General Foods Corp.*, 811 F. 2d at  
19 1339.

20 There is a strong presumption against removal jurisdiction. *Gaus v. Miles, Inc.*, 980 F. 2d 564,  
21 566 (9th Cir. 1992). The defendants have the burden of establishing that the removal is proper. *Id.*  
22 Any doubts regarding the right to removal must be resolved in favor of remand back to state court.  
23 *Matheson v. Progressive Specialty Insurance Company*, 319 F. 3d 1089, 1090 (9th Cir. 2003). Here,  
24 the Court finds that defendants have failed to conclusively demonstrate that Mr. Neal has been  
25 fraudulently joined as a defendant. Accordingly, plaintiffs' motion for remand is GRANTED, and this  
26 case is hereby REMANDED to the King County Superior Court, Cause No. 09-2-16564-5SEA.

27  
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2 The Clerk shall close this file and send a certified copy of this Order to the Clerk of Court for the  
3 King County Superior Court.

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5 Dated this 24<sup>th</sup> day of September, 2009.

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8 RICARDO S. MARTINEZ  
9 UNITED STATES DISTRICT JUDGE  
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